

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81188; File No. SR-NASDAQ-2017-061)

July 21, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Exchange Rules 4702 and 4754 to Enhance the Nasdaq Closing Cross

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on July 13, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4702 (Order Types) and Rule 4754 (Nasdaq Closing Cross) to enhance the Nasdaq Closing Cross by permitting members to submit LOC Orders until immediately prior to 3:55 p.m. ET subject to certain conditions, and to make other changes related to Closing Cross/Extended Hours Orders.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 4702 (Order Types) and Rule 4754 (Nasdaq Closing Cross) to enhance the Nasdaq Closing Cross by permitting members to submit Limit On Close ("LOC") Orders³ after the current 3:50 p.m. ET cutoff, and to make other changes related to Closing Cross/Extended Hours Orders. As proposed, LOC Orders entered after the current 3:50 p.m. ET cutoff and immediately prior to 3:55 p.m. ET will be accepted to participate in the Nasdaq Closing Cross provided that certain conditions are met. The Nasdaq Closing Cross is the process for determining the price at which orders shall be executed at the close and for executing those orders.⁴ The Exchange believes that permitting members to enter LOC Orders later in the trading day will encourage additional participation in the Nasdaq Closing Cross, thereby reducing Imbalances,⁵ and increasing the quality of the cross. Furthermore, the Exchange believes that the other changes related to Closing Cross/Extended

³ A "Limit On Close Order" or "LOC Order" is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross, and only if the price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC Order was entered. See Rule 4702(b)(12).

⁴ See Rule 4754(a)(6).

⁵ "Imbalance" means the number of shares of buy or sell MOC or LOC Orders that cannot be matched with other MOC or LOC, or IO Order shares at a particular price at any given time. See Rule 4754(a)(2). The definition above includes rule corrections made in this proposed rule change.

Hours Orders will align the Exchange's on-close order handling with member expectations and the characteristics of those order types.

Background

The Nasdaq Closing Cross provides a transparent auction process that determines a single price for the close. The price determined by the Nasdaq Closing Cross is also the Nasdaq Official Closing Price for stocks that participate in the cross. Members can submit LOC Orders, Market On Close ("MOC") Orders,⁶ and Imbalance Only ("IO") Orders⁷ that are available to participate in the Closing Cross along with other Close Eligible Interest.⁸ Today, MOC and LOC Orders may be entered, cancelled, and/or modified between 4:00 a.m. ET and immediately prior to 3:50 p.m. ET. IO Orders may be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross, but may not be cancelled or modified at or after 3:50 p.m. ET (with limited exceptions to correct a legitimate error), and members can also enter other Close Eligible Interest on the continuous book up until the time of the cross. At 3:50 p.m. ET, the Exchange stops accepting MOC and LOC Orders and begins disseminating an Order Imbalance Indicator⁹ that contains information about the Closing Cross, including the Current Reference Price,¹⁰ the

⁶ A "Market On Close Order" or "MOC Order" is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. See Rule 4702(b)(11).

⁷ An "Imbalance Only Order" or "IO Order" is an Order entered with a price that may be executed only in the Nasdaq Closing Cross and only against MOC Orders or LOC Orders. See Rule 4702(b)(13).

⁸ "Close Eligible Interest" means any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC. See 4754(a)(1).

⁹ "Order Imbalance Indicator" means a message disseminated by electronic means containing information about MOC, LOC, IO, and Close Eligible Interest and the price at which those orders would execute at the time of dissemination.

¹⁰ "Current Reference Price" means: (i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired. (ii) If more than one price exists under

number of paired shares at that price, the size and side of any Imbalance, Near and Far Clearing Prices,¹¹ and a market buy or market sell indicator.^{12, 13} At 4:00 p.m. ET, the Exchange will execute the Nasdaq Closing Cross at a price determined in accordance with Rule 4754(b)(2),¹⁴ and disseminate the executions via the consolidated tape.¹⁵ To ensure the best experience for market participants that trade in the Nasdaq Closing Cross, or use the Nasdaq Official Closing Price determined by the cross, the Exchange now proposes to introduce functionality that permits members to enter LOC Orders between the current 3:50 p.m. ET cutoff and immediately prior to 3:55 p.m. ET. The proposed functionality is described in detail in the following sections of the proposed rule change.

subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance. (iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross. (iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination. See Rule 4754(a)(7)(A). The definition above includes rule corrections made in this proposed rule change.

¹¹ The Near Clearing Price and Far Clearing Price are indicative prices at which the Nasdaq Closing Cross would occur if it were to occur at that time. Specifically, the “Far Clearing Price” is the price at which MOC, LOC, and IO Orders would execute, and the “Near Clearing Price” is the price at which MOC, LOC, IO, and Close Eligible Interest would execute. See Rule 4754(a)(7)(E)(i)-(ii).

¹² An indicator for “market buy” or “market sell” is disseminated if marketable buy (sell) shares would remain unexecuted above (below) the Near Clearing Price or Far Clearing Price. See Rule 4754(a)(7)(E)(iii).

¹³ See Rules 4754(a)(7), (b)(1). The Exchange disseminates the Order Imbalance Indicator every 5 seconds beginning at 3:50 p.m. ET until market close.

¹⁴ See Rule 4754(b)(2). Orders and quotes executed in the Nasdaq Closing Cross are allocated based on the priority described in Rule 4754(b)(3).

¹⁵ See Rule 4754(b)(4).

Acceptance of LOC Orders

The Nasdaq Closing Cross was designed to create a robust close that allows for efficient price discovery through a transparent auction process. To permit additional interest to participate in the Nasdaq Closing Cross, and increase the quality of the cross, the Exchange proposes to allow LOC Orders to be entered until immediately prior to 3:55 p.m. ET in certain circumstances. Specifically, the Exchange proposes to allow LOC Orders to be entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET if there is a Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:50 p.m. ET (“First Reference Price”).¹⁶ The presence of a First Reference Price indicates that there is matched buy and sell interest that is eligible to participate in the Nasdaq Closing Cross. When there is matched interest available to participate in the close, the Exchange believes that allowing members to continue to enter LOC Orders after the current 3:50 p.m. ET cutoff will facilitate a more efficient closing auction by allowing additional priced interest to participate in the close. When there is no First Reference Price, there is no matched buy and sell interest that is eligible to participate in the Nasdaq Closing Cross, and therefore no need to continue to accept LOC Orders. The Exchange believes that it is appropriate to allow members to enter LOC Orders later in the trading day where market conditions suggest that allowing additional interest to participate may serve to reduce Imbalances and increase the quality of the Nasdaq Closing Cross.

Re-Pricing of LOC Orders

While all LOC Orders must be entered with a limit price, the Exchange proposes to re-price LOC Orders entered after the current 3:50 p.m. ET cutoff to the less aggressive of the

¹⁶ If there is no First Reference Price a value of zero will be disseminated in the first Order Imbalance Indicator. A value other than zero in this message indicates that there is a First Reference Price.

order's limit price or the First Reference Price in order to prevent these orders from having a significant impact on the price established by the Nasdaq Closing Cross. Specifically, an LOC Order entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET will be accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for an LOC Order to buy (sell), in which case the LOC Order will be re-priced to the First Reference Price; provided that if the First Reference Price is not at a permissible minimum increment of \$0.01 or \$0.0001, as applicable, the First Reference Price will be rounded (i) to the nearest permitted minimum increment (with midpoint prices being rounded up) if there is no imbalance, (ii) up if there is a buy imbalance, or (iii) down if there is a sell imbalance.¹⁷ The Exchange proposes to use the First Reference Price to price these LOC Orders because they are designed to reduce Imbalances without having a significant impact on the price of the cross. For this reason, the Exchange will also only re-price these LOC Orders using the First Reference Price even when there is a newer Current Reference Price available, as re-pricing based on updated prices may decrease stability of the cross price, which is counter to the intent of this proposed rule change.

Alternative Closing Procedures

In addition to the Nasdaq Closing Cross described above, the Exchange operates an LULD Closing Cross and Primary Contingency Procedures that provide alternative processes for

¹⁷ The Exchange proposes to use natural rounding when there is no imbalance. When there is an imbalance the Exchange will round such that more offsetting interest can participate. Thus, where there is a buy imbalance the Exchange will round the First Reference Price up to allow more sell interest to participate, and when there is a sell imbalance the Exchange will round the First Reference Price down to allow more buy interest to participate. For example, if there is a sell imbalance, a First Reference Price of \$10.015 would be rounded down to \$10.01. Re-pricing based on a price of \$10.01 would allow additional buy orders to offset the sell imbalance at that price when they may be excluded at a price of \$10.02.

executing closing trades on Nasdaq.¹⁸ The LULD Closing Cross is employed when a Trading Pause pursuant to Rule 4120(a)(12) is triggered at or after 3:50 p.m. ET and before 4:00 p.m. ET.¹⁹ The Exchange proposes to specify in its rules that MOC, LOC, and IO Orders intended for the Nasdaq Closing Cross entered into the system and placed on the book prior to the Trading Pause will remain on the book to participate in the LULD Closing Cross. With this change, LOC Orders that are now available to be entered after the current 3:50 p.m. ET cutoff will be able to participate in the LULD Closing Cross. When the Exchange is conducting an LULD Closing Cross, LOC Orders would be eligible to be entered until the earlier of the Trading Pause and immediately prior to 3:55 p.m. ET.²⁰ In addition, the rule will be amended to correctly state that all IO Orders that are entered prior to the Trading Pause will participate in the LULD Closing Cross, instead of only those IO Orders entered prior to 3:50 p.m. ET, which is consistent with current functionality.²¹ The Exchange's intent has always been to include all MOC, LOC, and IO Orders that are entered and accepted in the LULD Closing Cross. Similarly, the Exchange's rules

¹⁸ The Exchange also employs Secondary Contingency Procedures, which are available if both the standard procedures and the Primary Contingency Procedures are unavailable. The Exchange is not proposing any changes to the Secondary Contingency Procedures as these procedures do not involve the execution of closing trades on Nasdaq. See Rule 4754(b)(8).

¹⁹ A recently approved but not yet operative proposed rule change amends this section to provide that the LULD Closing Cross is employed when a Trading Pause pursuant to Rule 4120(a)(12) *exists* at or after 3:50 p.m. ET and before 4:00 p.m. ET. See Securities Exchange Act Release No. 79876 (January 25, 2017), 82 FR 8888 (January 31, 2017) (SR-NASDAQ-2016-131). The discussion in this proposed rule change is based on currently implemented functionality.

²⁰ The Exchange also proposes to remove a reference in Rule 4754(b)(6)(C)(iii) that states that MOC or LOC Orders “may not be submitted after 3:50.” This conforming change is being made because members will now be permitted to submit LOC orders that would participate in the LULD Closing Cross if entered prior to the earlier of the Trading Pause and immediately prior to 3:55 p.m. ET as discussed in this filing.

²¹ MOC Orders entered after 3:50 p.m. ET will continue to be rejected, and therefore would not be eligible for the LULD Closing Cross. See Rule 4702(b)(11)(A).

also provide for Primary Contingency Procedures in the event that a disruption occurs that prevents the execution of the Nasdaq Closing Cross. In such instances, the Exchange segregates MOC and LOC Orders entered prior to 3:50 p.m. ET and IO Orders entered prior to 4:00 p.m. ET for participation in the Contingency Closing Cross. Since members will be able to submit LOC Orders up to immediately prior to 3:55 p.m. ET, the Exchange proposes to amend its rule for Primary Contingency Procedures to provide that LOC Orders entered prior to 3:55 p.m. ET are eligible to participate. Finally, to ensure a fair and orderly market, the Exchange employs certain Auxiliary Procedures when significant trading volume is expected at the close of market hours. Although the Exchange is not proposing any substantive changes to its Auxiliary Procedures, it is correcting an incorrect cross reference in that rule. In particular, Rule 4754(b)(5)(D) provides that the Exchange can adjust the threshold value set forth in subparagraph (c)(2)(D) to no greater than 20 percent when Auxiliary Procedures are employed. The Exchange proposes to correct this cross reference, which should instead point to subparagraph (b)(2)(E), which provides that if the Nasdaq Closing Cross price is outside benchmarks established by Nasdaq by a threshold amount, the cross will occur at the price within those thresholds that best satisfies to [sic] other conditions of the rule.

Closing Cross/Extended Hours Orders

The Exchange also proposes to make two changes with respect to Closing Cross/Extended Hours Orders: (1) to clarify handling of certain order types that are not eligible to participate in the Nasdaq Closing Cross as Closing Cross/Extended Hours Orders, and to add Market Maker Peg Orders to that list; and (2) to remove language regarding conversion of Closing Cross/Extended Hours Orders entered between 3:50 p.m. ET and the time of the Nasdaq Closing Cross. A Closing Cross/Extended Hours Order is an order that is flagged to participate in

the Nasdaq Closing Cross and entered with a time-in-force that continues after the cross. Such orders are typically treated as LOC Orders for participation in the Nasdaq Closing Cross and then operate pursuant to their order type and attributes.

Today, Rule 4702(b)(12)(B) states that, following the Nasdaq Closing Cross, a Closing Cross/Extended Hours Order may not operate as a Post-Only Order, Midpoint Peg Post-Only Order, Supplemental Order, Retail Order, or RPI Order. As written, this rule could be interpreted as implying that a member could enter these order types with an on-close instruction and would participate in the Nasdaq Closing Cross and thereafter not be eligible for extended hours trading. In fact, although these orders are eligible to participate in the Nasdaq Closing Cross when entered on the continuous book, Post-Only Orders, Midpoint Peg Post-Only Orders, Supplemental Orders, and Retail Orders, cannot be entered with a flag designating an on-close instruction, and therefore cannot operate as a Closing Cross/Extended Hours Order. Furthermore, RPI Orders are not currently offered on the Exchange. The Exchange therefore proposes to clarify the rule so that it is more transparent to members that a Post-Only Order, Midpoint Peg Post-Only Order, Supplemental Order, or Retail Order, may not operate as a Closing Cross/Extend Hours Order. In addition, the rule states that, in the case of a Market Maker Peg Order entered prior to 3:50 p.m. ET that is also designated to participate in the Nasdaq Closing Cross, the price of the Order for purposes of operating as an LOC Order will be established on entry and will not thereafter be pegged until after the completion of the Nasdaq Closing Cross. While this is consistent with current system behavior, the Exchange no longer believes that Market Maker Peg Orders should be eligible to be entered with a flag designating an on-close instruction, and thereby designated as Closing Cross/Extended Hours Orders, similar to the other order types mentioned above. Furthermore, members do not typically enter these orders with

such an instruction. The Exchange therefore proposes to specify that a Market Maker Peg Order may not operate as a Closing Cross/Extended Hours Order.

Rule 4702(b)(12)(B) also states that a Closing Cross/Extended Hours Order that is entered between 3:50 p.m. ET and the time of the Nasdaq Closing Cross is (i) rejected if it has been assigned a Pegging Attribute, (ii) treated as an IO Order and then entered into the System after the completion of the Nasdaq Closing Cross if entered through RASH, QIX, or FIX but not assigned a Pegging Attribute, and (iii) treated as an IO Order and cancelled after the Nasdaq Closing Cross if entered through OUCH or FLITE. The Exchange now believes that members would be better served by functionality that does not convert these Closing Cross/Extended Hours Orders to IO Orders and therefore proposes to remove the language in (ii) and (iii) above from its rules.²² The Exchange believes that this change is more consistent with member's expectations when entering orders that are expected to trade as LOC Orders but would be converted to IO Orders in the system today. A Closing Cross/Extended Hours Order that is entered between 3:50 p.m. ET and the time of the Nasdaq Closing Cross will continue to be rejected pursuant to (i) above if it has been assigned a Pegging Attribute.

Order Imbalance Indicator

As described in other parts of this filing, the Exchange disseminates an Order Imbalance Indicator beginning at 3:50 p.m. ET that includes several data elements to provide information about the Nasdaq Closing Cross to market participants. These data elements include the Current Reference Price and the number of shares that are paired at the Current Reference Price.

²² As an additional conforming change, the Exchange is also amending a reference in Rule 4702(b)(12)(B) that states that “[a]ll other LOC Orders and Closing Cross/Extended Hours Orders entered at or after 3:50 p.m. ET will be rejected” to reflect the proposed time period for entering LOC Orders, which will now be until immediately prior to 3:55 p.m. ET.

Currently, the rule states that the Current Reference Price is based on the single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, IO and Close Eligible Interest can be paired (with certain tie-breakers if multiple prices meet this criterion). In addition, the rule states that the paired shares data element indicates the number of shares represented by MOC, LOC, IO and Close Eligible Interest that are paired at the Current Reference Price. The Exchange notes, however, that the Order Imbalance Indicator has never included Close Eligible Interest in determining the Current Reference Price or the number of paired shares at that price. The Exchange therefore proposes to amend this rule to state that the Exchange will disseminate a Current Reference Price based on the single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired, and a paired share count based on the number of shares represented by MOC, LOC, and IO Orders that are paired at the Current Reference Price. With these changes, Rule 4754(a)(7)(B) will correctly reflect the information disseminated to market participants. In addition, the Exchange notes that Rule 4752(a)(2)(B) contains a similar error in including Open Eligible Interest in the Current Reference Price calculation and paired share count for the Nasdaq Opening Cross. The Exchange therefore proposes to correct that rule as well. With these changes, Rule 4752(a)(2)(B) will correctly indicate that the Exchange will disseminate a Current Reference Price based on the single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOO, LOO, OIO, and Early Market Hours orders can be paired, and a paired share count based on the number of shares represented by MOO, LOO, OIO, and Early Market Hours orders that are paired at the Current Reference Price.

Finally, the Order Imbalance Indicator includes the size of any Imbalance. Currently, Imbalance is defined in Rule 4754(a)(2) as “the number of shares of buy or sell MOC or LOC Orders that cannot be matched with other MOC or LOC, Close Eligible Interest or IO Order shares at a particular price at any given time.” Although the rule states that Close Eligible Interest is used when determining an Imbalance, in practice, similar to the Current Reference Price calculation and paired share count described above, the Imbalance calculation has never included Close Eligible Interest. The Exchange therefore proposes to remove the incorrect reference to Close Eligible Interest in the rule. As proposed, Imbalance will be correctly defined as “the number of shares of buy or sell MOC or LOC Orders that cannot be matched with other MOC or LOC, or IO Order shares at a particular price at any given time.” In addition, the Exchange notes that Rule 4752(a)(1) contains a similar error in including Open Eligible Interest in the Imbalance calculation for the Nasdaq Opening Cross. The Exchange therefore proposes to correct that rule as well. With this change, Rule 4752(a)(1) will correctly define an Imbalance for the Nasdaq Opening Cross as “the number of shares of buy or sell MOO, LOO or Early Market Hours orders that may not be matched with other MOO, LOO, Early Market Hours, or OIO order shares at a particular price at any given time.”

Implementation

The Exchange proposes to launch the functionality described in this proposed rule change in either Q3 or Q4 2017 pursuant to a symbol-by-symbol rollout. The Exchange will announce the implementation date of this functionality and the symbol rollout in an Equity Trader Alert issued to members prior to the launch date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁴ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the introduction of the proposed LOC Order functionality will remove impediments to and perfect the mechanism of a free and open market as this proposed change is designed to increase the quality of the Nasdaq Closing Cross. The Nasdaq Closing Cross provides an industry-leading, transparent price discovery process that aggregates a large pool of liquidity, across a variety of order types, in a single venue. The Exchange believes that increasing participation in the Nasdaq Closing Cross by offering the proposed LOC Order enhancement will further promote price discovery and participation at the close by allowing additional priced interest to be submitted for the close. In addition to providing a mechanism for members to execute closing interest, the Nasdaq Closing Cross also generates a closing price that is used widely throughout the industry for a variety of purposes including index and mutual fund valuations. The Exchange therefore believes that it is important to ensure that the Nasdaq Closing Cross provides the best possible experience for members and investors that rely on the cross and the closing prices it generates.

Allowing members to enter LOC Orders later in the trading day will enhance the Nasdaq Closing Cross by increasing participation, and reducing the frequency of Imbalances that may increase volatility of the closing cross price. Currently, members that have interest to execute at

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

the closing price have more limited options in submitting that interest after 3:50 p.m. ET when the time window for entering MOC and LOC Orders has closed. Specifically, these members must either submit IO Orders, which do not trade if there is no Imbalance and do not maintain price priority since they are continuously re-priced to the best bid or offer, or must submit regular orders to the continuous book, where they may execute before the cross begins. Member feedback has indicated that a longer period for the entry of LOC Orders would be beneficial for firms that participate in the close. The proposed functionality would allow firms to maintain price standing when providing liquidity intended for the Nasdaq Closing Cross, allowing potentially better trading outcomes for firms, and thereby encouraging additional interest to participate in the cross. The proposed rule change is therefore likely to improve price discovery and the stability of the Nasdaq Closing Cross to the benefit of all market participants. The Exchange believes that the proposed 3:55 p.m. ET cutoff for submitting LOC Orders appropriately balances the need for members to submit interest for the Nasdaq Closing Cross later in the trading day with the need for a stable cross.

Since the proposed functionality is designed to reduce Imbalances and create a more efficient cross, the Exchange will only accept these orders where there is a First Reference Price. As previously explained, the presence of a First Reference Price indicates that there is matched interest that is eligible to participate in the Nasdaq Closing Cross. The Exchange believes that this is when it is most helpful to allow additional interest intended for the cross as new LOC Orders can be used to decrease Imbalances and facilitate a more efficient closing auction to the benefit of members and investors. The proposed functionality has been designed to reduce Imbalances that may exist during the closing process, and is not intended to create Imbalances where there is no interest that is eligible to participate in the cross. Thus, the Exchange believes

that accepting LOC Orders between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET only when there is a First Reference Price is consistent with the protection of investors and the public interest. The Exchange believes that it is appropriate to allow members to enter LOC Orders until immediately prior to 3:55 p.m. ET where market conditions suggest that allowing additional interest to participate may serve to reduce Imbalances and increase the quality of the Nasdaq Closing Cross. Furthermore, if members wish to have their LOC Orders participate in the Nasdaq Closing Cross regardless of whether there is a First Reference Price they can continue to enter that interest prior to 3:50 p.m. ET.

To ensure more price stability in the Nasdaq Closing Cross, the Exchange is also proposing to re-price LOC Orders entered after 3:50 p.m. ET to the First Reference Price in circumstances where the order's limit price is more aggressive than the First Reference Price. The Exchange believes that re-pricing LOC Orders entered after the regular cutoff is consistent with just and equitable principles of trade because the proposed functionality is designed to reduce Imbalances without having a significant impact on the price determined by the cross. At the time it is disseminated, the First Reference Price represents the price, bounded by the continuous market, where the maximum number of on-close shares can be paired. The Exchange believes that it is appropriate to re-price to this price, provided that it is within the order's limit price. This will allow orders to coalesce around this price, creating additional liquidity, and potentially reducing Imbalances. Furthermore, to the extent that members do not want their LOC Orders re-priced, they can continue to submit LOC Orders before the 3:50 p.m. cutoff. Thus, the Exchange believes that it is consistent with the protection of investors and the public interest to re-price LOC Orders entered after 3:50 p.m. ET such that they contribute to available interest

eligible to participate in the cross, without the potential to significantly increase volatility in the closing cross price.

The Exchange also believes that it is consistent with the public interest and the protection of investors to allow LOC Orders entered after the regular 3:50 p.m. ET cutoff to participate in the LULD Closing Cross and Primary Contingency Procedures. The LULD Closing Cross is employed by the Exchange when a Trading Pause is triggered at or after 3:50 p.m. ET and before 4:00 p.m. ET, and today includes LOC Orders submitted prior to the current 3:50 p.m. ET cutoff. With the proposed changes to allow members to submit LOC Orders later in the trading day, LOC Orders entered after the regular 3:50 p.m. ET cutoff will also be permitted to trade in the LULD Closing Cross provided that they have been entered into the system and placed on the book prior to the pause.²⁵ IO Orders that are entered prior to the Trading Pause are also eligible to trade in the LULD Closing Cross today, and the changes being made to that section reflect this. The Exchange believes that the changes with respect to IO Orders are consistent with public interest and protection of investors as this change is being made to avoid member confusion about what interest is eligible for the LULD Closing Cross in the event that this procedure is used by the Exchange. Similarly, the Primary Contingency Procedures are employed when a disruption occurs that prevents the execution of the Nasdaq Closing Cross, and today also includes LOC Orders entered prior to 3:50 p.m. ET. Since LOC Orders may now be accepted later in the trading day, those orders will now also be allowed to participate in the Primary Contingency Procedures. The Exchange believes that allowing these later LOC Orders to

²⁵ As noted previously in this filing, the Exchange is also removing a reference in Rule 4754(b)(6)(C)(iii) that states that MOC or LOC Orders “may not be submitted after 3:50” because members will now be permitted to submit LOC orders that would participate in the LULD Closing Cross if entered prior to the earlier of the Trading Pause and immediately prior to 3:55 p.m. ET.

participate in the LULD Closing Cross and Primary Contingency Procedures will promote just and equitable principles of trade and perfect the mechanism of a free and open market. Finally, with respect to the changes for Auxiliary Procedures, the Exchange notes that it is only changing an incorrect cross reference, which will benefit members by ensuring that the Exchange's rulebook is accurate. No substantive changes are being made to this provision.

The Exchange also believes that the proposed changes related to Closing Cross/Extended Hours Orders are consistent with the protection of investors and the public interest. With respect to handling of Market Maker Peg Orders entered with an on-close instruction, the Exchange believes that the proposed functionality, which is to reject the order, is more consistent with member expectations. The Exchange does not believe that members want functionality that allows Market Maker Peg Orders to be entered with a flag designating an on-close instruction and which would therefore operate as Closing Cross / Extended Hours Orders. Furthermore, this is consistent with the Exchange's review of this order type, which indicates that members enter this combination very rarely. Market Maker Peg Orders were designed to assist members in meeting their quoting obligations and not as a means of submitting interest flagged with an on-close instruction. The Exchange also believes that the other changes to this rule to clarify that a Post-Only Order, Midpoint Peg Post-Only Order, Supplemental Order, or Retail Order, may not operate as a Closing Cross/Extend Hours Order will benefit members by increasing transparency with respect to order handling. No changes are being made to the trading system to implement this change; this change merely clarifies current functionality offered on the Exchange. Finally, with respect to Closing Cross/Extended Hours Orders entered between 3:50 p.m. ET and the time of the Nasdaq Closing Cross, the Exchange believes that it is consistent with the public interest and the protection of investors to no longer offer functionality that converts these orders to IO

Orders. With the proposed changes for LOC Orders, members will be able to enter LOC Orders up until 3:55 p.m. ET instead of the current 3:50 p.m. ET cutoff. After 3:55 p.m. ET, the Exchange believes that members would rather have their Closing Cross/Extended Hours Orders rejected like other LOC Orders rather than treated as IO Orders, which do not trade if there is no Imbalance and do not maintain price priority since they are continuously re-priced to the best bid or offer. The Exchange therefore believes that the proposed change is designed to promote just and equitable principles of trade.

Finally, the Exchange believes that the proposed changes related to the information disseminated in the Order Imbalance Indicator for both the closing and opening processes is consistent with the public interest and the protection of investors because these changes more accurately reflect the information currently disseminated. Today, the Order Imbalance Indicator for the Nasdaq Closing Cross does not include Close Eligible Interest in its calculation of the Current Reference Price or the paired share count. Similarly, the Order Imbalance Indicator for the Nasdaq Opening Cross does not include Open Eligible Interest for either of those data elements. In each case, the Exchange believes that it is more appropriate to exclude Close or Open Eligible Interest from the Current Reference Price calculation and paired share count disseminated to market participants as these orders may be executed in the continuous market before the closing or opening auction commences. The Exchange believes that updating its rule to accurately reflect the information disseminated to market participants will increase transparency surrounding these processes, and is therefore designed to promote just and equitable principles of trade. In addition, with respect to the definition of Imbalance, the Exchange notes that, similar to the Current Reference Price and paired share count, the Imbalance calculation does not include Close Eligible Interest for the Nasdaq Closing Cross or

Open Eligible Interest for the Nasdaq Opening Cross. For the same reasons described above, the Exchange believes that it is appropriate to not include interest that could be executed in the continuous market prior to the closing or opening auction in the Imbalance calculation. The Exchange believes that updating these rules will increase transparency to the benefit of members and other market participants, and is therefore designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is enhancing the Nasdaq Closing Cross to benefit members and investors, and does not believe that the proposed rule change would impose any significant burden on competition. Today, the Nasdaq Closing Cross provides a transparent auction process for executing member interest at the close. The proposed rule change is designed to allow additional interest to participate in the Nasdaq Closing Cross, and thereby provide a more efficient process for executing closing interest, and enhancing price discovery during the close. The Exchange believes that proposed functionality will enhance the experience for members that trade in the Nasdaq Closing Cross and the various market participants that use the prices discovered by the cross, and is evidence of the strong competition in the equities industry, where exchanges must continually improve their offerings to stay competitive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2017-061 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2017-061. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2017-061 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Eduardo A. Aleman
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).